

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Rita Bobe-Saleh	Team: Team # 4	CCRB Case #: 200808781	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 06/18/2008 9:00 AM	Location of Incident: East 169th Street and Grant Avenue; 44th Precinct stationhouse	Precinct: 44	18 Mo. SOL 12/18/2009	EO SOL 12/18/2009	
Date/Time CV Reported Thu, 06/19/2008 7:38 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Fri, 06/20/2008 9:31 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM George Weir	03161	944206	044 PCT
2. POF Jeannette Rivera	03561	933259	044 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM George Weir	Abuse: PO George Weir questioned § 87(2)(b) at East 169th Street and Grant Avenue in the Bronx.	
B.POF Jeannette Rivera	Abuse: PO Jeannette Rivera questioned § 87(2)(b) at East 169th Street and Grant Avenue in the Bronx.	
C.POM George Weir	Abuse: PO George Weir frisked § 87(2)(b) at East 169th Street and Grant Avenue in the Bronx.	
D.POM George Weir	Discourtesy: PO George Weir spoke rudely to § 87(2)(b) at East 169th Street and Grant Avenue in the Bronx.	
E.POM George Weir	Abuse: PO George Weir issued a summons to § 87(2)(b) at the 44th Precinct Stationhouse.	
F.POM George Weir	Abuse: PO George Weir searched § 87(2)(b) at East 169th Street and Grant Avenue in the Bronx.	
G.POM George Weir	Abuse: PO George Weir refused to provide his name and shield number to § 87(2)(b) at the 44th Precinct Stationhouse.	
H.POF Jeannette Rivera	Abuse: PO Jeannette Rivera refused to provide her name and shield number to § 87(2)(b) at the 44th Precinct Stationhouse.	

## Synopsis

On June 20, 2008, § 87(2)(b) filed a CCRB complaint via the call processing system (encl. 3A-B). On June 18, 2008, at approximately 9:00 AM, § 87(2)(b) left his apartment at § 87(2)(b) in the Bronx when he was approached by PO George Weir and PO Jeannette Rivera, both assigned to the 44<sup>th</sup> Precinct at East 169<sup>th</sup> Street and Grant Avenue. Both officers were in plainclothes. PO Rivera requested § 87(2)(b) to approach them. § 87(2)(b) asked PO Rivera to identify herself. Both officers pulled out their shields and displayed them to him. The officers asked § 87(2)(b) where he was coming from and he explained that he was on his way to work (Allegation A-B). PO Weir allegedly patted § 87(2)(b)'s pockets and asked him if he had any weapons (Allegation C). § 87(2)(b) asked why he would be carrying any weapons and PO Rivera asked him if he was an attorney. § 87(2)(b) explained that he knew his rights and PO Weir allegedly replied, "Are you a dick now?" (Allegation D) PO Weir informed § 87(2)(b) that they had to search his bag, to which § 87(2)(b) refused. PO Weir handcuffed § 87(2)(b) and informed him that they were going to search his bag no matter what (Allegation E). PO Weir searched § 87(2)(b)'s bag by taking all of its items out of it (Allegation F). § 87(2)(b) was then transported to the 44<sup>th</sup> Precinct Stationhouse. § 87(2)(b) was released with a summons for disorderly conduct. While at the precinct, § 87(2)(b) asked the officers for their names and shield numbers, and they allegedly failed to provide it to him (Allegation G and H).

§ 87(2)(g)

This case was reassigned to Investigator Bobe-Saleh on August 8, 2008, upon Inv. Lara Freishtat's resignation from the CCRB.

## Summary of Complaint

§ 87(2)(b) a § 87(2)(b)-old, 5'5," 130lbs, Hispanic male was interviewed at the CCRB on June 30, 2008 (encl. 3C-J). § 87(2)(b) provided a written statement that he wrote a couple of days after the incident in addition to his official statement to the CCRB (encl. 3F-G). Any inconsistencies in these statements are noted.

In his written statement, § 87(2)(b) noted that on June 18, 2008, he left his apartment located at § 87(2)(b) in the Bronx between 8:30-8:45 AM. § 87(2)(b) who was wearing jeans, a t-shirt and carrying a "lunch-box type" shoulder bag, walked by himself towards the D train on Grand Concourse in the Bronx, which he takes to get to his job in Connecticut. § 87(2)(b) made no stops, nor did he speak to anyone along the way. § 87(2)(b) was walking on East 169<sup>th</sup> Street towards Grant Avenue and observed a black Chevy Lumina a couple of car lengths ahead of him. As § 87(2)(b) neared the vehicle, he saw a female in the passenger seat and a male in the driver seat. § 87(2)(b) did not initially realize they were police officers until he noticed that they were parked in front of a fire hydrant. § 87(2)(b) continued to walk and made a right turn onto 169<sup>th</sup> Street when he heard a car approach and stop. The door opened and the officers exited the car.

PO1, who he described as a Hispanic female, approximately 5'3," with long blond hair, dressed in plainclothes and identified by this investigation as PO Jeannette Rivera, from the 44<sup>th</sup> Precinct, stated to § 87(2)(b) "Good morning." § 87(2)(b) did not reply and continued walking. PO Rivera repeated, "Excuse me sir. Good morning." § 87(2)(b) asked PO Rivera if she had been speaking to him and she replied that she had been. § 87(2)(b) asked how he could help them. PO Rivera asked if § 87(2)(b) could approach them. § 87(2)(b) asked PO Rivera to identify herself. She replied, "Are you joking?" In his written statement, § 87(2)(b) stated that PO Rivera stated, "You know who we are." Both officers pulled out their shields, which had been hanging under their shirts, and displayed them to § 87(2)(b). § 87(2)(b) described PO2 as a 6'1" male, bald, 250 lbs, dressed in plainclothes with tattoos around his biceps. § 87(2)(b) identified PO2 as PO George Weir from the summons he later issued to him. The officers asked § 87(2)(b) where he was coming from and he explained that he was coming from his home and was on his way to work. PO Rivera was standing to § 87(2)(b)'s right, when PO Weir stood in front of him and immediately reached for § 87(2)(b)'s front pockets and patted them down. PO Weir never searched § 87(2)(b)'s pockets. § 87(2)(b) asked PO Weir how he could help him and PO Weir replied by asking § 87(2)(b) if he was carrying any knives or guns. § 87(2)(b) asked why he would be carrying these things. PO Rivera asked § 87(2)(b) if he was an attorney. He replied that he was not, but that he knew his rights. PO Weir then asked § 87(2)(b) "Are you a dick now?"

PO Weir informed § 87(2)(b) that they had to search his bag. § 87(2)(b) refused and asked what probable cause they had. He had nothing in his bag other than clothes for his part-time job and papers. It must be noted that in his written statement, § 87(2)(b) stated that once he was asked if he had any weapons on him, he was immediately requested to open his bag so that it could be searched. In his written statement, § 87(2)(b) alleged that PO Rivera asked him if he was "stupid." PO Weir turned § 87(2)(b) around, handcuffed him and told § 87(2)(b) that his bag was going to be searched no matter what. PO Weir opened § 87(2)(b)'s bag and removed everything that was in it. § 87(2)(b) asked the officers why they stopped him, but they never responded. After completing the bag search, the officers placed § 87(2)(b) in their vehicle and transported him to the 44<sup>th</sup> Precinct stationhouse. He was logged in at the front desk. In his written statement, § 87(2)(b) added that PO Weir placed his hand into his back pocket, and removed his ID to check for warrants. In his written statement, § 87(2)(b) stated that PO Rivera inquired as to his marital status and then asked him again why he had been walking down that street. PO Rivera escorted § 87(2)(b) to the prisoner holding cell. PO Weir issued § 87(2)(b) a summons for disorderly conduct. PO Rivera told § 87(2)(b) that she would escort him to the stationhouse door. PO Weir approached them. While at the door, § 87(2)(b) asked the officers for their names and shield numbers. Seeing that the officers were not going to answer, § 87(2)(b) left the stationhouse.

### **Result of Investigation**

#### **Officer Identification**

§ 87(2)(b) provided a copy of the summons issued to him for disorderly conduct and it was completed by PO George Weir, assigned to the 44<sup>th</sup> Precinct (encl.3H). The 44<sup>th</sup> Precinct tour 2 roll call listed PO Weir as being assigned to SNEU duty on June 18, 2008 (encl. 5A). During his CCRB statement, PO Weir identified his partner as PO Jeannette Rivera. She was also listed on the roll call as being assigned to SNEU duty (encl. 5A).

#### **Officer Statements**

##### **PO George Weir**

PO Weir, a § 87(2)(b)-old, 6'1," 240lbs, black male with black hair and brown eyes was interviewed at the CCRB on July 15, 2008 (encl. 4A-D). As of the writing of this report, PO Weir has 15-years of tenure as a member of service. On June 18, 2008, PO Weir worked from 7:00AM to 3:35PM and was assigned to SNEU with PO Rivera. They were dressed in plainclothes and assigned to an unmarked motor vehicle. PO Weir had the following entry in his memobook with regard to this incident:

0900- 1 under 169 + Grant- c sum. Discon. (Encl. 4A-B)

On June 18, 2008, at approximately 9:00AM, PO Weir and PO Rivera were conducting a SNEU operation. They were watching § 87(2)(b) in the Bronx, from their parked vehicle. PO Weir explained that the building is a known drug location, and people trespass to obtain drugs from the location. PO Weir and PO Rivera observed § 87(2)(b) who was carrying a briefcase type of bag, walk out of § 87(2)(b) by himself. PO Weir stated that § 87(2)(b) was not doing anything suspicious as he was walking and in fact, was not doing anything at all. The officers decided to stop § 87(2)(b) to investigate whether or not he had been trespassing. PO Weir did not know if the address was a NYCHA building.

The officers stopped § 87(2)(b) at East 169<sup>th</sup> Street and Grant Avenue. They asked him for his identification and they asked him if he lived in the building. § 87(2)(b) became “nasty,” and was cursing, using obscene language, though PO Weir could not recall what he had said. § 87(2)(b) also began to complain about how officers were always bothering him and stopping him. Despite his anger and words, § 87(2)(b) provided his ID, which showed a Connecticut address. § 87(2)(b) explained to the officers that he was on his way to work in Connecticut, where he also lived sometimes, though he also stays at § 87(2)(b) in the Bronx. He told them that they were making him late for work. § 87(2)(b) continued to curse at the officers and a few people stopped to watch the situation. PO Weir described § 87(2)(b) as a “nasty person.” PO Weir placed § 87(2)(b) under arrest for disorderly conduct. PO Weir frisked and searched § 87(2)(b) and placed him inside the back of the police vehicle. The officers placed § 87(2)(b)'s bag in the backseat with him.

During transport, § 87(2)(b) asked PO Weir for his name and shield number, which he provided verbally. § 87(2)(b) was brought to the 44<sup>th</sup> Precinct stationhouse, where he was searched again. He was placed inside a holding cell. PO Weir checked § 87(2)(b)'s information for any open warrants. The search was negative and PO Weir released § 87(2)(b) with a summons for disorderly conduct. PO Weir had § 87(2)(b) sign a copy of the summons and he then walked him out of the stationhouse.

PO Weir denied that he frisked or searched § 87(2)(b) prior to him being placed in handcuffs. PO Weir also denied that § 87(2)(b)'s bag was ever searched, even at the stationhouse. PO Weir stated that they never checked the bag for any weapons, because it had been slightly open and they could see some papers inside of it. PO Weir denied that either he or PO Rivera asked if § 87(2)(b) was an attorney and he denied speaking rudely to him at any time. PO Weir denied that § 87(2)(b) ever asked PO Rivera for her name and/or shield number. PO Weir never heard PO Rivera provide her information to § 87(2)(b).

#### PO Jeannette Rivera

PO Rivera, a § 87(2)(b)-old, 5'4", 140lbs, Hispanic female with blonde hair and hazel eyes was interviewed at the CCRB on November 12, 2008 (encl. 4E-I). On June 18, 2008, PO Rivera worked from 7:00AM to 3:35PM. She was assigned to SNEU observation with PO Weir. PO Rivera has been a member of service for five years, has worked with SNEU for three years and with this particular team for four months. Both officers were in plainclothes and assigned to an unmarked vehicle. PO Weir was the operator and PO Rivera the front passenger. PO Rivera had the following entry in her memobook with regard to this incident:

0900- 1 under 169<sup>th</sup> and Grant Avenue. C-Summons, discon, PO Weir. (Encl. 4E-G)

On June 16, 2008, at approximately 9:00 AM, in the vicinity of 169<sup>th</sup> Street and Grand Avenue in the Bronx, PO Rivera and PO Weir were watching a building that is a known drug prone location where they have made many arrests. PO Rivera did not recall the address to the building but that it was located in the area of § 87(2)(b). PO Rivera observed § 87(2)(b) exit this building. She did not recall how far in distance they were to § 87(2)(b). No other persons had exited or entered the building. The officers, by mutual agreement, decided to approach § 87(2)(b) to determine whether he

resided in the building and to verify such information. When asked if § 87(2)(b) acted in any suspicious manner, PO Rivera stated that there was nothing suspicious about § 87(2)(b) aside from the fact that he exited a known drug prone location. They intercepted § 87(2)(b) as he walked around the corner from the building. § 87(2)(b) was carrying a backpack at this time. PO Rivera and PO Weir approached § 87(2)(b) and stated, "Hi. Can we speak to you?" § 87(2)(b) in a screaming tone stated, "For what? For what?" PO Rivera noted that their shields were visible and it was obvious that they were plainclothes officers. § 87(2)(b) was asked if he lived in the building by the officers. He explained that he stayed there sometimes but that he worked in Connecticut and lived in Connecticut. PO Weir requested § 87(2)(b) to provide his ID. PO Rivera recalled that § 87(2)(b) provided an out-of-state ID for Connecticut. However, she then stated that she was unsure whether he provided the ID during the stop or later at the stationhouse. § 87(2)(b) then began screaming, yelling and cursing. He stated, "I'm fucking late for work. I'm fucking late. I'm gonna miss my fucking train to Connecticut." PO Rivera noted that he was "way out of line in public." PO Weir instructed § 87(2)(b) to turn around. § 87(2)(b) placed his backpack on the ground and PO Weir handcuffed him. PO Weir then frisked his waistband but did not search his person prior to putting § 87(2)(b) in the car. PO Rivera denied that the officers searched § 87(2)(b) or his bag. PO Rivera explained that the bag was not searched because § 87(2)(b) did not pose any safety threats and that he was being brought in for a disorderly conduct C-Summons. PO Rivera noted that the backpack was placed next to § 87(2)(b) in the car and she then sat next to him while they transported him to the stationhouse. No other officers were present or responded to the location.

PO Rivera was presented with § 87(2)(b)'s photo and did not recognize him. PO Rivera denied that PO Weir told § 87(2)(b) that he was a "dick." There was never any discussion as to whether § 87(2)(b) had any weapons on his person. Once they arrived at the stationhouse, § 87(2)(b)'s bag was searched. PO Rivera did not interact with § 87(2)(b) at the stationhouse during his estimated 15 minute short stay. PO Rivera did not recall exactly where she was in the stationhouse but that she did not enter the prisoner holding cell area. PO Weir completed the paperwork for § 87(2)(b). PO Rivera denied that § 87(2)(b) requested her name or shield number and never heard him make such a request to PO Weir.

PO Rivera had never encountered § 87(2)(b) prior to this occasion or after this incident. PO Rivera was unsure whether the building that § 87(2)(b) exited was an F-TAP building, but noted that it was highly likely.

### **Police Documents**

**Summons #** § 87(2)(b) PO George Weir issued a disorderly conduct summons to § 87(2)(b) on June 18, 2008 (encl. 3H). No subsection is listed.

**Command Log:** The Tour 2 command log lists § 87(2)(b)'s arrest for disorderly conduct at 9:00 AM. The arresting officer is listed as PO George Weir and that § 87(2)(b) was released with a C-summons § 87(2)(b) at 9:10AM. The address listed is § 87(2)(b) in the Bronx (encl. 5B).

**Roll Call:** The Tour 2 roll call for June 18, 2008, lists PO George Weir and PO Jeannette Rivera as being assigned to SNEU duty (encl. 5A).

### **Notice of Claim**

The Comptroller's Bureau of Law and Adjustment conducted a search and found no claims filed by § 87(2)(b) (encl. 5C).

### **Criminal Conviction History**

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

### **Subject Officer CCRB History**

During his 15-year tenure with the NYPD, PO George Weir has no prior substantiated CCRB cases (encl. 2A). During her 5-year-tenure with the NYPD, PO Jeanette Rivera was substantiated and cited for other misconduct in two CCRB cases; 200703011 and 200710245. In both cases, PO Rivera was substantiated for conducting a strip-search. In August 2008, a DCT trial decided that no disciplinary action be taken against PO Rivera with regards to case #200703011. The disposition is still pending for case #200710245 (encl. 2B-C).

### **Civilian CCRB History**

§ 87(2)(b) has no prior cases with the CCRB (encl. 2D).

### **Conclusions and Recommendations**

#### **Undisputed and Disputed Facts**

It is undisputed that on June 18, 2008, PO George Weir and PO Jeanette Rivera observed § 87(2)(b) exit § 87(2)(b) in the Bronx and approached him in the vicinity of 169<sup>th</sup> Street and Grand Avenue. It is undisputed that the officers asked § 87(2)(b) questions regarding whether he resided in the building. It is undisputed that § 87(2)(b) informed the officers that he worked in Connecticut and was on his way to work at the time of the stop. It is undisputed that PO Weir arrested § 87(2)(b) and placed him in the officers' car along with his bag and transported him to the 44<sup>th</sup> Precinct stationhouse. It is undisputed that PO Weir issued § 87(2)(b) a summons for disorderly conduct.

§ 87(2)(g)

#### **Assessment of Evidence**

§ 87(2)(g)

§ 87(2)(b) PO Weir and PO Rivera all confirmed that on June 18, 2008, § 87(2)(b) exited § 87(2)(b) in the Bronx and was subsequently approached in the vicinity of East 169<sup>th</sup> Street and Grant Avenue, a couple of blocks away from the building that he exited. § 87(2)(b) stated that at no time did the officers tell him why they approached him. PO Weir and PO Rivera, in sum, stated that they had approached § 87(2)(b) because he exited a building that is drug prone, where they have previously arrested individuals for trespassing. PO Weir and PO Rivera both stated that they wanted to determine whether § 87(2)(b) was trespassing, and both noted that none of § 87(2)(b)'s actions were suspicious or indicative of criminality.

Both officers stated that PO Weir requested § 87(2)(b)'s ID. PO Weir stated that § 87(2)(b) became "nasty" and started using obscene language, although he could not recall exactly what was said. PO Rivera recalled that § 87(2)(b) made statements such as, "I'm fucking late to work. I'm fucking late. I'm gonna miss my fucking train to Connecticut." Although § 87(2)(b) used such language, both officers confirmed that § 87(2)(b) complied with their request for information in that he explained to them his living and work situation. PO Weir stated that as requested, § 87(2)(b) provided his ID to him. § 87(2)(b) however, never alleged that the officers requested his ID, but that they asked him where he was going, at which time he explained that he resided at § 87(2)(b) and that he

[REDACTED]

[REDACTED]

[REDACTED]

\_\_\_\_\_

\_\_\_\_\_

[REDACTED]  
 [REDACTED]  
 [REDACTED]  
 [REDACTED]  
 [REDACTED]

[illegible]

\_\_\_\_\_

### Allegations and Analysis

**Allegation A: PO George Weir questioned § 87(2)(b) at East 169<sup>th</sup> Street and Grant Avenue in the Bronx.**

**Allegation B: PO Jeanette Rivera questioned § 87(2)(b) at East 169<sup>th</sup> Street and Grant Avenue in the Bronx.**

§ 87(2)(g)

§ 87(2)(b) In *P v. McIntosh* (encl. 1A-I), the Court noted that the fact that a police encounter occurring in a high crime or a drug prone location, without more does not satisfy the requirements of *De Bour*. The police must be aware of or observe conduct which provides a particularized reason to request information.

§ 87(2)(g)

**Allegation C: PO George Weir frisked § 87(2)(b) at East 169<sup>th</sup> Street and Grant Avenue in the Bronx.**

§ 87(2)(g)

**Allegation D: PO George Weir spoke rudely to § 87(2)(b) at East 169<sup>th</sup> Street and Grant Avenue in the Bronx.**

§ 87(2)(g)

**Allegation E: PO George Weir issued a summons to § 87(2)(b) at the 44<sup>th</sup> Precinct stationhouse.**

§ 87(2)(g)

§ 87(2)(b) Both officers confirmed that § 87(2)(b) complied with the officers' request for information including providing his ID. Both officers stated that § 87(2)(b) was arrested for disorderly conduct because he used obscene language against the officers. PO Weir added that a few people gathered to watch the incident, yet PO Weir did not recall the obscene statements that § 87(2)(b) made. PO Weir described § 87(2)(b) as a "nasty person." PO Rivera recalled that § 87(2)(b) repeatedly stated "fucking" when he complained about the stop, that he was going to miss the train and be late to work.

According to Penal Law Section 240.20 for disorderly conduct, "*a person is guilty of disorderly conduct, when with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof*" (encl. 1J). § 87(2)(g)

§ 87(2)(b) In *PD v. Erazo* (2003), an



individual used obscene language whilst interacting with an officer, and was subsequently arrested for disorderly conduct. The officer was found guilty of arresting the individual without probable cause and in bad faith. In the analysis, it was noted that disorderly conduct, “*must be accompanied by the stated culpable mental state of ‘intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof’*” (encl. 1K-M). Furthermore, it outlined the Court of Appeals precedent that limits and defines ‘public inconvenience’ in relation to disorderly conduct, as a “*situation that develops beyond a dispute between individuals to a point where the dispute becomes a general public disturbance problem*” (encl. 1K-M) § 87(2)(g)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**Allegation F: PO George Weir searched § 87(2)(b) at East 169<sup>th</sup> Street and Grant Avenue in the Bronx.**

§ 87(2)(g)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] As discussed in *Kamins New York Search and Seizure*, containers found in the arrestee’s possession can be searched: “(1) to protect the safety of the public or the arresting officer; or (2) to protect evidence from destruction or concealment. These containers may also be searched, at a later time, as part of an inventory search conducted during the booking procedure” (encl. 1L). § 87(2)(g)

[REDACTED]

[REDACTED]

[REDACTED]

**Allegation G: PO George Weir refused to provide his name and shield number to § 87(2)(b) at the 44<sup>th</sup> Precinct stationhouse.**

**Allegation H: PO Jeanette Rivera refused to provide her name and shield number to § 87(2)(b) at the 44<sup>th</sup> Precinct stationhouse.**

§ 87(2)(g)

[REDACTED]

[REDACTED]

[REDACTED]

Investigator:	Date:
Supervisor:	Date:
Reviewed by:	Date:
Reviewed by:	Date: